

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Timo Heinrich et al.

Examiner: Noble E. Jarrell

Serial No.: 10/560,737

Group Art Unit: 1624

Filed: December 15, 2005

Confirmation No.: 1689

Title: INDOLE DERIVATIVES AS SEROTONIN REUPTAKE INHIBITORS

PETITION UNDER 37 C.F.R. §1.181

Mail Stop
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

It is respectfully requested that a new, non-final Office Action be issued in the present application.

On August 7, 2008, a Final Rejection was issued in the present application. On December 8, 2008, an Amendment After Final was presented. On January 5, 2009, an Advisory Action was mailed, indicating entry of the Amendment After Final, but that various rejections of record were not overcome. Accordingly, on January 6, 2009, a Notice of Appeal was filed, and on March 6, 2009, a Brief on Appeal was filed.

On June 9, 2009, subsequent to the filing of the Brief on Appeal, Applicants received an Advisory Action, which indicated that "proposed amendments" will not be entered, as raising new issues, and indicating that a Brief on Appeal must be filed two months from the filing of the Notice of Appeal of January, 2009. The Advisory Action further indicates that the "Reply" of March 6, 2009 fails to place the application in condition for allowance. Moreover, the Advisory

Action indicates that a prior rejection under 35 U.S.C. 102 is now being applied as a rejection under 35 U.S.C. 103.

It is thus respectfully submitted that either the present Advisory Action misunderstands the status of the present case, in which amendments after final *were* entered, and a Brief on Appeal has *already* been filed, or, in the alternative, the Advisory Action attempts to impermissibly add a rejection to the application on appeal, without reopening of prosecution. It is submitted that, if it is desired to make a new rejection, prosecution *must* be reopened at this point, or if the new grounds of rejection meet the standards of MPEP §1207.03, issued as part of an Examiner's answer giving applicants the opportunity to reopen prosecution.

Accordingly, applicants hereby petition for either reopening of prosecution and issuance of a non-final Office Action, or issuance of an Examiner's Answer which properly treats the Brief on Appeal on its merits.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

/Harry B. Shubin/

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Date: June 18, 2009
HBS/ts